



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 30776291

Date: JUN. 06, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a design and marketing executive specializing in the area of aircraft livery, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirement for this classification. Specifically, he determined that the Petitioner did not meet at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

## I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that the term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” It also sets forth a multi-part analysis. A petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about other awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

The Petitioner is employed as the Chief Creative Officer and Partner for F-G- USA Inc., a company providing digital media marketing services, advertising campaigns, and livery design services. The record shows that he has several years of experience in the fields of marketing, branding, and design, and intends to continue in these roles with his current employer in the United States.

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his participation as a judge of the work of others in his field and the display of his work at artistic exhibitions or showcases. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to published materials about him and his work in professional or major trade publications or other major media, and his membership in associations requiring outstanding achievements of their members.<sup>1</sup> After reviewing all of the evidence in the record, we find that it does not establish that he meets at least three of the evidentiary criteria, and thus does not meet the initial evidence requirements for an individual of extraordinary ability.

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<sup>1</sup> As the Petitioner does not challenge the Director’s decision that he does not meet the criterion at 8 C.F.R. § 204.5(h)(3)(viii) relating to his performance in a leading or critical role for an organization with a distinguished reputation, we consider that claim to be waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*  
8 C.F.R. § 204.5(h)(3)(ii)

To meet the standards of this criterion, an individual must submit evidence that 1) they are a member of an association; 2) the association is in their field of extraordinary ability; 3) the association requires outstanding achievements as a condition for membership; and 4) that the outstanding achievements are judged by national or international experts in their fields.

The Petitioner submitted evidence of his membership in the Association of Registered Graphic Designers (RGD) as a registered member, which allows him to use the “RGD” designation. He therefore satisfied the first two elements of this criterion. He also submitted the section of the RGD bylaws relating to membership which states that in addition to educational, experiential, and fee requirements, registered members must successfully complete a qualification examination, which includes an online test and portfolio interview. The Petitioner further included the results of his online test and portfolio interview in the record, which included a note stating that due to his more than 15 years of experience he was not required to complete three of the five sections of the test relating to design research, design principles, and business. Finally, he submitted articles and profiles about other RGD members.

The Director concluded that this evidence was insufficient to show that RGD requires outstanding achievements of its members. On appeal, the Petitioner asserts that in denying his claim to this criterion, the Director did not take the evidence regarding the qualification examination and profile interview into consideration, and placed too much emphasis on the payment of annual dues as a disqualifying factor. He also asserts that the qualification examination is a stringent one, and that RGD is regarded as a prestigious association in the field. However, we note that pages from the association’s website state that the RGD designation (and thus membership at the Petitioner’s level) is a “signal[s] of quality and competence to the profession, public and government,” indicating that it reflects the attainment of a standard of professionalism rather than an outstanding professional achievement.

This is also shown by the Petitioner’s exemption from three of the five sections of the online test due to his experience in the field. In general, requirements based upon a minimum level of education or years of experience do not show that membership is based upon outstanding achievements. *See generally 6 USCIS Policy Manual F.2(B)(1), [www.uscis.gov/policy-manual](http://www.uscis.gov/policy-manual).* While the website also describes the designation requirements as “rigorous,” the allowance for the substitution of experience for sections of the test shows that the emphasis is upon acquired knowledge and skill in the field rather than professional achievements that elevate a member above their peers.

In addition, the criteria used by RGD in evaluating the Petitioner’s portfolio presentation do not consider any specific achievements that would make a potential member stand out from other graphic design professionals. Rather, they focus on questions such as whether the presentation demonstrated the Petitioner’s knowledge of his clients and their needs and whether he displayed originality and proficiency in developing designs that successfully met those needs. And the reviewer comments also

focus on the Petitioner's communication, business, and design skills rather than any achievements which set him apart from his colleagues.

Finally, although the record includes the professional profiles of several RGD members who include that designation in their profile, this evidence does not show that attaining the designation is an outstanding achievement in and of itself. Rather, the use of that designation in these profiles, frequently used for job searches, demonstrates a wish to convey a certain level of skill and professionalism that could be desirable to a potential employer.

For all of the reasons above, the Petitioner has not established that his membership in RGD required him to demonstrate outstanding achievements in his field. So we conclude that he does not meet this criterion.

*Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)*

This criterion requires evidence showing published material about the individual and their work in the field of extraordinary ability. In addition, that material must include basic information such as its title, date and author, and must have been published in professional or major trade publications or other major media.

Here, the Petitioner submitted several articles which were about him and which focused on his designs of aircraft livery. This includes two articles on the website [businessinsider.com](http://businessinsider.com), as well as articles on [cnet.com](http://cnet.com), [wearefinn.com](http://wearefinn.com), [aviationweek.com](http://aviationweek.com), and other websites relating to the aviation industry. At least one article was published in print: the [REDACTED] 2023 edition of *Metropolitan Airport News* included an interview of the Petitioner about his work as an aircraft livery designer. The record also includes media kits and "About" pages regarding these websites, as well as reports from [similarweb.com](http://similarweb.com) showing statistics including total visits over a three-month period and global, country and industry rankings. While the Director acknowledged that these articles were about the Petitioner and his work, he concluded that these materials did not establish that any of the websites or journals qualified as professional or major trade publications or other major media.

On appeal, the Petitioner asserts that the reports from [similarweb.com](http://similarweb.com) are reliable sources of the readership or circulation of the websites. In support of this, he points to printouts featuring a variety of well-known companies and media outlets which "either refer[s] to SimilarWeb to indicate the reliability of the publication *it* cites, or advertises its own website on the sites in which articles about [the Petitioner] are featured." He also asserts that because these companies chose to advertise on these websites, an inference can be made that the websites have "national and global reach."

This latter assertion made by the Petitioner is not supported by the evidence but based only upon conjecture. In determining whether a particular medium or publication qualified under this criterion, we consider such relevant factors as the intended audience and the relative circulation, readership, or viewership. *See generally* 6 USCIS Policy Manual F.2(B)(1). The Petitioner has not established that

which advertisements appear on a particular webpage for a particular user at a particular time is a similarly relevant factor in making that determination.

As for the figures provided by the websites and in the similarweb.com reports, relative circulation, viewership, or readership figures are relevant when considering major trade publications or other major media. The record demonstrates that the information from similarweb.com is relied upon in media and other industries to evaluate website traffic and other performance indicators, but the figures provided are insufficient to show that any of the websites in which the articles about the Petitioner appeared are one of those qualifying types of media. For example, the information from the businessinsider.com website states that its platform has 200 million “global monthly uniques,” but does not clarify whether this figure reflects traffic on just the website or includes other websites and social media platforms, and does not put this figure into perspective. In responding to the Director’s request for evidence (RFE), the Petitioner added a report from similarweb.com about this website, stating that it experienced almost 186 million visits over a three-month period and had monthly unique visitors of 38.5 million. It also provides global and country rank figures, and an industry rank amongst “search engines.” But this information does not include sufficient context to establish that businessinsider.com is either a major trade medium or other major medium, as the total size of the groups in which the website is ranked is not identified. And the industry ranking amongst “search engines” does not identify a particular trade or profession which is the intended audience of this medium.

Other reports from similarweb.com appear to include customized searches by the Petitioner, but the relevance of this information has not been demonstrated. For example, the Petitioner asserts in his RFE response that the website aviationweek.com, which published an article about him and his work, is ranked seventh for “aviation-related websites.” But the report showing this website in the seventh position is labeled “audience interests” without explanation of this term, the list is comprised mainly of websites serving the “travel and tourism” industry, and the ranking is based upon “cross-visitation,” another term that is not explained. And while the same visits and ranking information discussed above is also provided for this website, they suffer from the same lack of context, and are significantly lower than those for businessinsider.com.

The evidence regarding the remaining websites which published articles about the Petitioner and his work have the same issues as those described above. While we disagree with the Director’s conclusion that statistics such as those from similarweb.com are not useful in determining whether a website may qualify as professional or major trade publication or other major media, in this case the Petitioner has not demonstrated the significance or relevance of the figures provided to establish the major status of these websites. As such, we conclude that the Petitioner has not shown that the articles about his him and his work were published in professional, major trade or other major media, and he does not meet the requirements of this criterion.

### III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we have reviewed

the entire record and conclude that it does not establish that the Petitioner has the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of their work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that they are one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

**ORDER:** The appeal is dismissed.